

RECEIVED

JUL 25 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
1994 Annual Access Tariff Filings ) CC Docket No. 94-65  
 )

APPLICATION FOR REVIEW

AT&T CORP.

Mark C. Rosenblum  
Robert J. McKee  
Peter H. Jacoby

Its Attorneys

Room 2255F2  
295 North Maple Avenue  
Basking Ridge, N. J. 07920  
Telephone: (908) 221-3539

July 25, 1994

No. of Copies rec'd 0410  
List ANODE

## TABLE OF CONTENTS

|                                |    |
|--------------------------------|----|
| SUMMARY . . . . .              | i  |
| BACKGROUND STATEMENT . . . . . | 2  |
| ARGUMENT . . . . .             | 7  |
| CONCLUSION . . . . .           | 12 |

## SUMMARY

The Common Carrier Bureau's June 24 Orders erred in denying AT&T's petition to suspend and investigate the 1994 annual local exchange carrier ("LEC") access tariff filings on the ground that those carriers had improperly failed to reduce their price cap indices ("PCIs") to reflect the conclusion of their equal access cost amortization as an exogenous cost change. Contrary to the Bureau's finding, the LEC Price Cap Order did not preclude exogenous treatment of the equal access cost; that decision held only that ongoing LEC equal access expense should not be treated exogenously to prevent deliberate or inadvertent cost shifting. No such risk is posed by treating the amortization exogenously. The LEC Price Cap Reconsideration Order, relied on by the Bureau, likewise held only that exogenous treatment of the amortization was not warranted on the record then available. That ruling does not preclude exogenous treatment of the amortization at this time, when the LECs have conceded they have fully recovered these expenses. Finally, neither the express wording of the Commission's rules nor past practice support the Bureau's conclusion that exogenous treatment of this amortization requires a prior rulemaking or LEC waiver request.

In the Matter of )  
 )  
1994 Annual Access Tariff Filings ) CC Docket No. 94-65  
 )

Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, AT&T Corp. ("AT&T") hereby requests the Commission to review and reverse the Common Carrier Bureau's June 24 Orders in this proceeding,<sup>1</sup> to the extent that those decisions deny exogenous treatment of equal access cost amortizations for local exchange carriers ("LECs") subject to price cap regulation.

1 See 1994 Annual Access Tariff Filings, CC Docket No. 94-65, Memorandum Opinion and Order, DA 94-706, released June 24, 1994 ("Ameritech Order"); 1994 Annual Access Tariff Filings, CC Docket No. 94-65, Memorandum Opinion and Order, DA 94-707, released June 24, 1994 ("PacTel Order"). Except where specific reference to one of these decisions is required, the Bureau's rulings are referred to collectively as the "June 24 Orders."

on two demonstrably erroneous conclusions. First, the Bureau found that the Commission has previously held that the amortization of these expenses is not exogenous, when in fact the Commission has made no such ruling. Second, the Bureau held that exogenous treatment of these costs requires either a new Commission rulemaking or a waiver of the current rules. Nothing in the Commission's price cap plan, however, requires such procedural diversions as a predicate to treating the equal access cost amortization exogenously. The Commission should therefore reverse the June 24 Orders and remand this matter to the Bureau with instructions to implement an appropriate exogenous cost reduction in the LECs' price caps.

#### BACKGROUND STATEMENT

In response to the Modification of Final Judgment ("MFJ")<sup>2</sup>, shortly after the adoption of the Commission's access charge plan the Bell Operating Companies ("BOCs") began on a large scale to convert

---

<sup>2</sup> United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983). The BOCs also undertook network reconfiguration programs to conform their facilities to the MFJ's requirements. The Decree Court also required AT&T, subject to certain conditions, to guarantee the BOCs' recovery of their equal access and network reconfiguration costs within ten years of the divestiture date (i.e., by January 1, 1994). See United States v. Western Electric Co., Inc., 569 F. Supp. 1057, 1123 (D.D.C. 1983).

their end offices to equal access and to ballot their subscribers concerning their choice of a presubscribed carrier. The GTE Telephone Operating Companies ("GTOCs") also undertook equal access conversion pursuant to the provisions of the GTE Final Judgment<sup>3</sup>, and the Commission extended equal access obligations (with a modified implementation schedule) to all other LECs.<sup>4</sup>

The BOCs' total equal access costs were estimated at over \$2.6 billion in submissions by those carriers to the Commission in 1985. In response to those filings, the Commission directed that the non-capitalized portion of these equal access expenses -- which the BOCs estimated at more than \$1.2 billion -- should be deferred and amortized over a single eight-year period ending on December 31, 1993. The Commission concluded that amortization was necessary because the equal access costs were of an extraordinary nature, would be incurred over only a few years, and would otherwise distort the carriers' revenue requirements and rates.<sup>5</sup> The

---

<sup>3</sup> See United States v. GTE Corp., 603 F. Supp. 730 (D.D.C. 1984) ("GTE Final Judgment").

<sup>4</sup> See MTS and WATS Market Structure, 100 F.C.C.2d 860 (1985); Investigation of Access and Divestiture Related Tariffs, 101 F.C.C.2d 911 (1985).

<sup>5</sup> Petitions for Recovery of Equal Access Costs, Memorandum Opinion and Order, FCC 85-628, 50 Fed. Reg. 50,910 (1985), recon., 1 FCC Rcd 434 (1986). The Commission also found that amortization over a fixed

Commission also applied its amortization directive to other LECs' non-capitalized equal access costs.<sup>6</sup>

A substantial portion of these unamortized equal access expenses (estimated by AT&T at a minimum of \$100 million) remained reflected in the LECs' access rates when the Commission adopted price cap regulation of the LECs in late 1990. Under the Commission's plan, the LEC rates in effect as of July 1, 1990 -- which, as shown above, included those unamortized equal access costs -- were used to initialize the LECs' price cap indices ("PCIs") as of January 1, 1991. However, upon the conclusion of the Commission's prescribed eight-year period on December 31, 1993, the LECs' equal access costs were fully amortized and recovered by those carriers. This fact was starkly underscored by the BOCs' filings with the Decree Court earlier this year, pursuant to its equal access cost guarantee, in which those carriers acknowledged that they had fully recovered their equal access and network reconfiguration costs.<sup>7</sup>

---

(footnote continued from previous page)

period with a definite termination point would avoid substantial access rate fluctuations. Id.

<sup>6</sup> See, e.g., Centel Companies (Petition for Waiver), 2 FCC Rcd 1486 (1987).

<sup>7</sup> See Petition of AT&T Corp. in 1994 Annual Access Tariff Filings, filed April 27, 1994 ( "AT&T Petition"), Appendix A.

Despite the fact that these expenses had already been fully recovered, the LECs nevertheless failed voluntarily to adjust their PCIs to reflect the expiration of the equal access cost amortization in their 1994 annual access tariff filings. Accordingly, AT&T and other parties petitioned the Commission to require those carriers to correct their indices pursuant to Section 61.45(d)(1) of the Commission's rules, which provides that the LECs' exogenous costs (the " $\Delta$ " variable of the price cap equation) shall include "such . . . cost changes as the Commission shall . . . require."

In support of its petition, AT&T showed that exogenous treatment of the equal access cost amortization is fully consistent with the treatment of other expense amortizations under the LEC price cap plan, such as LEC amortizations of reserve depreciation deficiencies ("RDA") and inside wire amortizations.<sup>8</sup> As AT&T pointed out there, the Commission concluded that exogenous treatment of those expense amortizations was required to preserve just and reasonable rates, while allowing the LECs to recoup their legitimate costs.<sup>9</sup> These

---

<sup>8</sup> See AT&T Petition, pp. 5-6.

<sup>9</sup> See Policies and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6808 (1990) ("LEC Price Cap Order") (¶ 173) (exogenous treatment of RDA amortization required because "it would be unfair to ratepayers who are now bearing the cost of the amortization program if rates were not adjusted downward at the end of the

(footnote continued on following page)



conclusions are fully applicable to the amortization of equal access costs. Further, AT&T showed that in developing its computation of the LECs' productivity factor the Commission's staff had removed "the costs of conversion to equal access" from those carrier's historical revenues to assure the validity of the productivity calculation.<sup>10</sup> Thus, allowing the LECs to continue to include fully amortized equal access costs in the PCIs would distort the Commission's prescribed price cap formula for determining the maximum level of those carriers' rates.

The June 24 Orders denied AT&T's petition on two grounds. First, the Bureau pointed out that in the LEC Price Cap Order the Commission had declined to treat the LECs' ongoing costs of converting to equal access as an exogenous expense, and reasoned that this conclusion also precluded exogenous treatment of the amortization of those costs.<sup>11</sup> Additionally, the orders noted that in

---

(footnote continued from previous page)

program"); Policies and Rules Concerning Rates of Dominant Carriers, 6 FCC Rcd 2637, 2673-74 (1991) ("LEC Price Cap Reconsideration Order") (¶ 79) (inside wire amortization to be treated exogenously).

<sup>10</sup> AT&T Petition, p. 7, citing LEC Price Cap Order, 5 FCC Rcd at 6887, 6892 (¶¶ 6, 18).

<sup>11</sup> Ameritech Order, ¶ 56 and PacTel Order, ¶ 38, citing LEC Price Cap Order, 5 FCC Rcd at 6808 (¶ 180).

the LEC Price Cap Reconsideration Order the Commission had found the record before it did not warrant exogenous treatment of the equal access cost amortization.<sup>12</sup>

Second, the Bureau concluded that, even if the equal access cost amortization warranted exogenous treatment, that relief was unavailable in the absence of a prior Commission rulemaking or Commission action granting a LEC waiver request to implement a reduction in its price cap indices to account for that cost change. Thus, according to the Bureau, exogenous treatment of the amortization's expiration is precluded under Section 61.45(d) of the Commission's rules.<sup>13</sup>

#### ARGUMENT

Contrary to the Bureau's conclusion, the LEC Price Cap Order did not preclude exogenous treatment of the LECs' equal access cost amortization. In that decision, the Commission addressed the appropriate treatment of the LECs' ongoing costs of converting to

---

<sup>12</sup> Ameritech Order, ¶ 55 and PacTel Order, ¶ 37, citing 6 FCC Rcd at 2667 (n. 77). The Bureau also noted that, in reliance on the LEC Price Cap Reconsideration Order, the 1994 TRP Order had rejected a request by AT&T to include data on the equal access amortization in the information on exogenous costs supplied by LECs in their annual Tariff Review Plans ("TRPs"). See Commission Requirements for Cost Support Material To Be Filed With 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060, 1063 (1994) ("1994 TRP Order").

<sup>13</sup> See Ameritech Order, ¶ 56; PacTel Order, ¶ 38.

equal access, rather than the amortization of non-capitalized equal access costs previously incurred by those carriers under rate of return regulation. The Commission based its decision to treat ongoing equal access costs endogenously on

"the difficulty of assessing equal access costs, and the corresponding risk that these carriers could willfully or inadvertently shift switched access costs into the equal access category . . . ."14

These considerations, however, are plainly inapplicable to the amortization of previously-incurred equal access conversion expenses because those amounts had already been reflected in the carriers' books well prior to the adoption of incentive regulation, thereby obviating the likelihood of deliberate or unintentional misallocation of switched access costs.<sup>15</sup> Thus, the LEC Price Cap Order is not a bar to exogenous treatment of the equal access cost amortization.

---

<sup>14</sup> LEC Price Cap Order, 5 FCC Rcd at 6808 (¶ 180). The Commission subsequently emphasized that the basis for its denial of exogenous treatment was "the incentives exogenous cost treatment could create to inflate the amounts spent on equal access." LEC Price Cap Reconsideration Order, 6 FCC Rcd. at 2666-67 (¶ 66).

<sup>15</sup> Moreover, because exogenous treatment of the equal access cost amortization reduces the LECs' price cap indices, those carriers do not have the incentive for intentional cost shifting that would exist if ongoing equal access costs were treated exogenously.

Similarly, nothing in the LEC Price Cap Reconsideration Order now precludes exogenous treatment of the LECs' equal access expense amortization. In response to MCI's request there to treat the cost amortization exogenously, the Commission noted that the issue presented was "whether the BOCs will experience any cost change in 1994 that stems from factors beyond their control."<sup>16</sup> The Commission declined at that time to treat the expiration of the amortization as exogenous in view of the "meager factual record" that was then available on such a future event.<sup>17</sup> No such concerns are present at this juncture. As shown above, all of the BOCs have made filings with the Decree Court affirming that they have fully recovered their equal access and network reconfiguration expenses. Moreover, none of the other LECs subject to that amortization submitted any showing in the tariff support for their annual access filings that those carriers have not also fully recovered those costs. In view of the markedly different (and, indeed, virtually conclusive) factual record now before the Commission, the Bureau's reliance on the 1991 LEC Price Cap Reconsideration Order to deny exogenous

---

<sup>16</sup> LEC Price Cap Reconsideration Order, 6 FCC Rcd at 2667 (n. 77) (emphasis supplied).

<sup>17</sup> Id.

treatment to the equal access cost amortization was clearly erroneous.

The Bureau's additional procedural argument for denying exogenous treatment -- namely, that such relief requires a rulemaking or a successful LEC waiver request -- is made of whole cloth. Section 61.45(d) of the Commission's rules provides that exogenous cost change "shall be limited to those cost changes that the Commission shall permit or require." While Section 61.45(d)(1)(1)-(v) lists a number of cost changes that are considered exogenous, subsection (vi) provides that the exogenous cost category also includes "such . . . other extraordinary exogenous costs changes as the Commission shall permit or require" (emphasis supplied). There is thus no basis for the June 24 Orders claim that "a plain reading of Section 61.45(d) precludes exogenous treatment" of the equal access cost amortization.<sup>18</sup>

The fact that the Bureau's interpretation is erroneous is underscored by the Commission's past practice of according exogenous treatment to cost changes that are not specifically enumerated in its price cap rules, without either a rulemaking or waiver request. For example, AT&T's Petition showed (p. 5 n. 7) that in another tariff review proceeding the Commission directed

---

<sup>18</sup> Ameritech Order, ¶ 54; PacTel Order, ¶ 36.

Comsat to make refunds prior charges to customers, including AT&T, and concurrently found that the refund by Comsat should be treated by AT&T as an exogenous cost change under the counterpart provision to Section 61.45(d) in AT&T's price cap plan.<sup>19</sup> In a subsequent tariff investigation of Virgin Islands Telephone Corporation's charges, the Bureau ordered that LEC to refund the rate increases to AT&T, and simultaneously directed AT&T to reflect the refund as an exogenous adjustment in its PCI on the basis of the Comsat Refund Order.<sup>20</sup>

The Bureau entirely ignored these prior decisions in its June 24 Orders.<sup>21</sup> Its failure to do so,

---

<sup>19</sup> Communications Satellite Corp., 4 FCC Rcd 8514 (1989) ("Comsat Refund Order"), recon., 6 FCC Rcd 7353 (1991).

<sup>20</sup> Virgin Islands Telephone Corporation, 6 FCC Rcd 7350 (1991).

<sup>21</sup> The Commission's extensive proceedings on non-pension post-employment benefit ("OPEB") costs are even more compelling evidence that no rulemaking or waiver request is required before exogenous treatment of a cost change may be sought. In 1992, several LECs filed tariff revisions which sought to adjust their PCIs to reflect exogenous treatment of OPEB expenses. The Bureau suspended those filings and conducted a lengthy investigation, after which it denied the claims for exogenous treatment on substantive and evidentiary grounds. See Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions, 8 FCC Rcd 1024 (1993), rev'd sub nom. Southwestern Bell Tel Co. v. FCC, Nos. 93-1168 et al. (D.C. Cir, July 12, 1994).. In their 1993 annual tariffs, several LECs

and to correct its erroneous interpretation of Section 61.45(d)'s requirements, was error and requires reversal by the Commission.

#### CONCLUSION

For the reasons stated above, the Commission should reverse the June 24 Orders and remand this proceeding to the Bureau with instructions to implement appropriate adjustments in the LECs' price caps to

---

(footnote continued from previous page)

sought exogenous treatment of a portion of their OPEB expenses; the Bureau again initiated an investigation into the tariffs, which is still pending. See 1993 Annual Access Tariff Filings, 8 FCC Rcd 4960 (1993). The June 24 Orders incorporated into that pending investigation the LECs' claims in the instant tariff filings for certain OPEB expenses. Ameritech Order, ¶ 71; PacTel Order, ¶ 51.

Under the Bureau's interpretation in the June 24 Orders, none of the proceedings described above would have been necessary or appropriate, because OPEB and similar accounting changes are not among the exogenous cost changes specifically enumerated in Section 61.45(d)(1)(i)-(v), and no rulemaking or waiver requests with respect to exogenous treatment of OPEB costs had taken place. The fact that the Commission has nevertheless expended enormous efforts on its OPEB tariff investigations lays bare the meritlessness of the Bureau's argument in the June 24 Orders.

- 13 -

reflect an exogenous cost reduction for the amortization  
of their equal access costs.

Respectfully submitted,

AT&T CORP.

By Mark C. Rosenblum p1g  
Mark C. Rosenblum  
Robert J. McKee  
Peter H. Jacoby

Its Attorneys


Room 2255F2  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
Telephone: (908) 221-3539

July 25, 1994



CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 25th day of July, 1994, a copy of the foregoing "Application for Review" of AT&T Corp." was served by U.S. first class mail, postage prepaid, upon the parties listed on the attached list.

  
Ann Marie Abrahamson

## SERVICE LIST

Donna M. Hermerding  
Ameritech  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Mr. Don May  
Anchorage Telephone Utility  
600 Telephone Avenue, MS#8  
Anchorage, AK 99503

Mr. Paul Berman, Esq.  
Alane C. Weixel, Esq.  
Covington & Burling  
1201 Pennsylvania Ave., N.W.  
P. O. Box 7566  
Washington, D.C. 20044-7566  
Attorneys for Anchorage Telephone Utility

Patricia Koch  
Assistant Vice President  
External Relations and  
New Business Issues  
Bell Atlantic  
1133 20th Street, N.W., 8th Floor  
Washington, D.C. 20036

R. W. Fleming  
Operations Manager  
BellSouth Telecommunications, Inc.  
29G57 Southern Bell Center  
675 W. Peachtree Street, N.E.  
Atlanta, GA 30375

Donald Innes  
Citizens Utilities  
P. O. Box 496020  
Redding, CA 96049-6020

Evertt H. Williams  
Director-Pricing and Tariffs  
GTE Telephone Operations  
600 Hidden Ridge, HQE02B20  
P. O. Box 152092  
Irving, TX 75015-2092

Robert A. Mazer  
Nixon, Hargrave, Devans & Doyle  
One Thomas Circle, Suite 800  
Washington, D.C. 20005  
Counsel for The Lincoln Telephone  
and Telegraph Company

M. E. King, Jr.  
President and Chief Executive Officer  
Nevada Bell  
Room B132  
645 East Plumb Lane  
P. O. Box 11010  
Reno, NV 89520

Executive Director -  
Federal Regulatory Matters  
Telesector Resources Group  
NYNEX Government Affairs Co.  
1300 I Street, N.W., Suite 400 West  
Washington, D.C. 20005

A. E. Swan  
Pacific Bell  
140 New Montgomery Street  
San Francisco, CA 94105

Errol Pinto  
Rochester Telephone Corporation  
180 S. Clinton Avenue  
Rochester, NY 14646

Anne U. MacClintock  
Vice President, Regulatory Affairs  
and Public Policy  
Southern New England Telephone  
227 Church Street  
New Haven, CT 06510

William A. Blase, Jr.  
Director-Federal Regulatory  
Southwestern Bell Telephone Company  
1401 I Street, N.W., Suite 1100  
Washington, D.C. 20005

Mr. William F. Wardwell  
Vice President - Service Costs and Pricing  
Local Telecommunications Division  
Sprint/United Management Company  
Post Office Box 11315  
Kansas City, MO 64112

Ms. Cyndie Eby  
U S WEST, Inc.  
1020 19th Street, N.W., Suite 700  
Washington, D.C. 20036